

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CATAHAMA, LLC)
as assignee of FRESH HARVEST RIVER LLC ,)
Plaintiff,)
v.) **2:10-cv-1140**
KERRY INC. and THE KERRY GROUP LLC)
Defendant.)

MEMORANDUM ORDER

Now pending before the Court is DEFENDANTS’ MOTION TO AMEND THE CASE MANAGEMENT/SCHEDULING ORDER (ECF No.147), filed by Defendants Kerry, Inc. and Kerry Group PLC (“Kerry”), and the response in opposition thereto filed by Plaintiff Catahama, LLC (“Catahama”) (ECF No.148). The motion is ripe for disposition. Also pending are DEFENDANTS KERRY INC. AND KERRY GROUP PLC’S MOTIONS FOR SUMMARY JUDGMENT PURSUANT TO F.R.C.P. 56(c) (ECF No. 128), to which Catahama has not yet been required to respond.

This case involves a complex commercial dispute. The discovery deadline has been extended on numerous previous occasions. On January 31, 2013, the Court ruled: “**THERE WILL BE NO FURTHER EXTENSION OF DISCOVERY.**” (Emphasis in original). On February 15, 2013, Kerry filed a motion for summary judgment (ECF No. 128). On April 2, 2013, the Court was forced to extend discovery because Kerry reported that it had failed to gather and produce ESI documents from 17 current and former employees. The parties also reported that they needed an additional three (3) weeks to complete all depositions. In the April 2nd Order, the Court required Kerry to complete its supplemental production of documents by May 3, 2013 and instructed counsel to confer and propose a schedule for: (1) the completion of

fact discovery (as necessitated by Kerry's supplemental production); and (2) summary judgment briefing. Counsel were apparently unable to reach an amicable resolution.

This motion followed. In essence, Kerry asks the Court to extend discovery until October 25, 2013; to allow it to conduct additional written discovery, requests for admission and depositions; and to issue a new deadline for filing and/or amending summary judgment motions which would extend into 2014. Catahama agrees to a 90-day extension of time to complete certain, specified discovery that had already been contemplated by the parties, but opposes any other expansion of discovery. Catahama opposes Kerry's effort to file an amended summary judgment motion unless Kerry can show sufficient cause for that relief.

In its April Order, the Court did not authorize or invite the parties to further expand or delay the completion of discovery. This case was filed in 2010 and has taken far too long to resolve. As Catahama points out, but for Kerry's own oversight in gathering ESI, discovery in this case should already be closed. Discovery will not be expanded, although the parties will be permitted to complete the depositions previously contemplated and jointly agreed upon (as detailed in Catahama Response at ¶ 3).

As to dispositive motions, Kerry apparently now recognizes that the summary judgment motion it filed in February 2013 was premature. Accordingly, that motion will be denied without prejudice and all parties will be permitted to file dispositive motions, if warranted, twenty-eight (28) days after the close of fact discovery.

AND NOW, this 30th day of May, 2013, in accordance with the foregoing, it is hereby ORDERED, ADJUDGED and DECREED that DEFENDANTS' MOTION TO AMEND THE CASE MANAGEMENT/SCHEDULING ORDER (ECF No.147) is hereby **GRANTED IN PART AND DENIED IN PART**, as follows:

All fact discovery shall be completed on or before August 15, 2013. Depositions shall be limited to those deponents referenced in Catahama Response ¶ 3, unless mutually agreed by counsel. Counsel shall meet and confer **FORTHWITH** to finalize the schedule for all such depositions;

All parties may file dispositive motions on or before September 12, 2013. Responses thereto shall be filed on or before October 10, 2013. Reply briefs, if any, shall be filed on or before October 24, 2013.

DEFENDANTS KERRY INC. AND KERRY GROUP PLC'S MOTIONS FOR SUMMARY JUDGMENT PURSUANT TO F.R.C.P. 56(c) (ECF No. 128) are **DENIED WITHOUT PREJUDICE**.

BY THE COURT:

s/ Terrence F. McVerry
United States District Judge

cc: All counsel of record
Via CM/ECF